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**JUL 10 2006**

**OFFICE OF PETITIONS**

In re Application of  
Maxey et al.  
Application No. 09/776,574  
Filed: February 1, 2001  
Attorney Docket No. CM2-104033-006

**DECISION ON PETITION**

This is a decision on the petition under 37 CFR 1.137(b), filed January 23, 2006, to revive the above-identified application. The petition was recently forwarded to the Office of Petitions for a decision on the merits. The Office sincerely apologizes for any inconvenience.

The petition is **dismissed**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." No additional petition fee is necessary.

The application became abandoned as a result of petitioner's failure to file an appeal brief (and fee required by 37 CFR 41.20(b)(2)) within two (2) months of the Notice of Appeal filed March 17, 2003. The Office mailed a Notice of Abandonment on September 28, 2005.

The provisions of 37 CFR 1.137(b) provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must include payment of the issue fee or any outstanding balance. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

- (2) The petition fee as set forth in 37 CFR 1.17(m);
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and
- (4) Any terminal disclaimer (and fee set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

The present petition does not satisfy requirement (1) above.

Pursuant to MPEP 711.03(c)(II)(A)(2)(c), where abandonment occurred because of the failure to file an appeal brief, the reply required pursuant to 37 CFR 1.137(b)(1) must be either:

- (A) an appeal brief in compliance with 37 CFR 41.37(c) and appeal brief fee;
- (B) the filing of an RCE accompanied by a submission and the requisite fee in compliance with 37 CFR 1.114; or
- (C) the filing of a continuing application under 37 CFR 1.53(b).

With the present petition, petitioner submitted an amendment as the reply. As an amendment is not an appropriate reply where the application became abandoned for failing to file an appeal brief, the petition is **dismissed**. Petitioner must file a renewed petition under 37 CFR 1.137(b) accompanied by either an appeal brief and fee, a RCE with a submission and fee, or a continuing application within TWO MONTHS of the date of this decision.

Further correspondence with respect to this matter should be addressed as follows and **to the attention of Senior Petitions Attorney Christina Tartera Donnell**:

By mail:                      Mail Stop Petition  
                                    Commissioner for Patents  
                                    P.O. Box 1450  
                                    Alexandria, VA 22313-1450

By FAX:                      (571) 273-8300 - Attn: Office of Petitions

By hand:                     Customer Service Window  
                                    Randolph Building  
                                    401 Dulany Street  
                                    Alexandria, VA 22314

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3211.



Christina Tartera Donnell  
Senior Petitions Attorney  
Office of Petitions